

OCT 24 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Part 90 of the Commission's)
 Rules to Facilitate Future Development of)
 SMR Systems in the 800 MHz Frequency)
 Band)

PR Docket No. 93-144
 RM-8117, RM-8030
 RM-8029

Implementation of Sections 3(n) and 322 of)
 the Communications Act - Regulatory)
 Treatment of Mobile Services)

GN Docket No. 93-252

Implementation of Section 309(j) of the)
 Communications Act - Competitive Bidding)

PR Docket No. 93-253

To: The Commission

**MOTION FOR LEAVE TO FILE
 CONSOLIDATED
SUPPLEMENT TO PETITIONS FOR RECONSIDERATION**

Small Business in Telecommunications (SBT) hereby requests leave to file the attached Consolidated Supplement To Petitions For Reconsideration to the Commission's Memorandum Opinion and Order and Second Report and Order ("the Orders") released July 10, 1997 ("Supplement"), and in support states the following:

The new issue raised within the associated Supplement was not known at the time that SBT filed its earlier Petitions and could not have been reasonably known at that time. The issue arises under 15 U.S.C. §632 and the Commission's compliance with same. Whether the Commission properly complied with said statute is not a matter which appeared within the Orders and no public notice which might have alerted SBT to the problem earlier has been

published by either the Commission or the United States Small Business Administration. Accordingly, SBT was not provided reasonable notice that this issue existed, nor was SBT provided a reasonable opportunity, prior to the filing of the attached Supplement, to request reconsideration of the Commission's Orders with regard to this issue. Since the proper treatment of this issue by the agency will require a reissuance of the Orders, it is incumbent on the Commission to immediately take those actions which are prudent to protect the interests of auction participants.

SBT further notes that the effect of the agency's inadvertent oversight calls into serious question the effectiveness of its Orders for all purposes, including the finality of such Orders in accord with 47 C.F.R. §1.103. Section 1.103 includes an implied presumption that the Commission's decisions are fully within its statutory jurisdiction and discretion. Yet, as shown clearly within the attached Supplement, such jurisdiction and discretion were not present. Therefore, this Supplement is properly brought in the most timely manner reasonably available to SBT to demonstrate that there exists serious doubt as to whether the Commission's Orders are, in fact, effective for the purposes made.

SBT notes that the subject rule making has continued beyond the issuance of the Commission's Orders in actions taken by the Wireless Telecommunications Bureau. The Orders, therefore, left open the issue of finality of this proceeding due to the WTB's ongoing activities in the creation of auction rules and processes. These actions are under review by the agency to determine whether any of the WTB's decisions are proper in accord with the Bureau's

delegated authority. What is clear, however, is that no published final ruling has been issued by the WTB regarding all of the auction rules (i.e. minimum payments, click box bidding, etc.). Since such matters are still pending before the agency, this Supplement may be deemed to be timely brought during the period prior to the publication of such rules.

Finally, it is clear that the public interest would be served by the Commission's acceptance of the Supplement, to avoid the unnecessary risk of litigation among auction participants. Acceptance of the Supplement and action thereunder will promote the public's reliance on the actions of government, demonstrating fully that the agency is not attempting to circumvent statutory law in a manner which might appear wholly improper. To do otherwise would make the agency appear to be dodging its statutory responsibilities, an image that does nothing to promote fidelity to the agency's future decisions or its relationship with other federal agencies.

Respectfully submitted,

SMALL BUSINESS IN TELECOMMUNICATIONS

By


Robert H. Schwaninger, Jr.

Dated: October 24, 1997

Its General Counsel
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CERTIFICATE OF SERVICE

I, hereby certify that on this 24th day of October, 1997, I served a copy of this Motion for Leave to File Consolidated Supplement to Petitions for Reconsideration via first-class mail, postage prepaid to the following:

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and via hand delivery to the following:

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